



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No. EPCRA-08-2003-0016

IN THE MATTER OF:	)	
	)	
Defense Technology Corp.	)	
of America	)	COMBINED
1855 South Loop	)	CONSENT AGREEMENT
P.O. Box 248	)	
Casper, WY 82601	)	
	)	
Respondent.	)	
	)	

United States Environmental Protection Agency, Region 8 ("EPA" or "Complainant"), and Respondent, Defense Technology Corp. of America, ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

**I. PRELIMINARY STATEMENT**

1. This matter is subject to 40 C.F.R. part 22. This combined Complaint and Consent Agreement ("Combined Consent Agreement") is entered into by the parties for the purpose of simultaneously commencing and amicably concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA and Respondent agree that EPA has jurisdiction over this matter pursuant to section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045. The supervisors in the Legal Enforcement Program

and the Technical Enforcement Program within the Office of Enforcement, Compliance and Environmental Justice, Region 8, EPA, have been duly authorized to institute this action.

3. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein. Respondent asserts that it is not liable in this matter. Without acknowledging the veracity of Respondent's contentions, EPA acknowledges that it is Respondent's position that had this matter proceeded through the administrative adjudicatory process, Respondent could have asserted defenses and mitigating circumstances relating to the alleged violations contained herein.
4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement. For purposes of additional enforcement actions for appropriate injunctive or other equitable relief or criminal sanctions for any violations of law, Respondent has neither admitted nor denied the factual allegations as set forth in this Combined Consent Agreement.
5. EPA and Respondent agree that settlement of this matter is in the public interest, and EPA and Respondent agree that execution of this Combined Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

6. This Combined Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
7. This Combined Consent Agreement contains all terms of the settlement agreed to by the parties.
8. The EPA is authorized to seek enforcement in this case pursuant to section 325 of EPCRA, 42 U.S.C. § 11045.

## **II. GENERAL ALLEGATIONS**

9. Defense Technology Corp. of America ("Respondent") is a corporation organized on August 17, 1998 under the laws of the State of Delaware and therefore is a "person" as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
10. Respondent is an owner or operator of a "facility" as that term is defined in section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and which is located on Neosho Road, approximately 13 miles north of Casper, Wyoming.

11. On September 4, 2002, Mr. William E. Moore, an authorized and properly credentialed EPA inspector, inspected Respondent's facility near Casper, Wyoming.
12. Respondent consented to EPA's inspection conducted on September 4, 2002, at Respondent's facility.
13. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as defined under the Occupational Safety and Health Act of 1970, § 651, ("OSHA") and the regulations promulgated under that Act at 29 CFR § 1910.1200(c) and section 329(5) of EPCRA, 42 U.S.C. § 11049(5).

#### **First Alleged Violation**

**(Failure to Submit Inventory Form for MALONONITRILE to the SERC, LEPC and Fire Department required under section 312 of EPCRA)**

[Paragraphs 1 - 13 of the PRELIMINARY STATEMENT and GENERAL ALLEGATIONS are incorporated by this reference and set out

as if fully stated herein.]

14. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. part 370, provide that the owner or operator of a facility required to prepare or have available an MSDS for a hazardous chemical under the Occupational Safety and Health Act (OSHA) of 1970, 29 U.S.C.

§ 651 et seq., shall submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility a completed emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) for hazardous chemicals covered by section 311 of EPCRA, 42 U.S.C. § 11021. The hazardous chemical inventory form is to be submitted annually on or before March 1.

15. Respondent allegedly failed to submit a completed emergency and hazardous chemical inventory form for **MALONONITRILE** by March 1, 2002, to the Wyoming SERC, the Natrona County LEPC, and fire department with jurisdiction over the facility.
16. EPA therefore alleges a violation of the requirements of timely reporting as required under section 312(a) of EPCRA, 42 U.S.C. § 11022(a) and the assessment of penalties under section 325 of EPCRA, 42 U.S.C. § 11045.

### **Second Alleged Violation**

**(Failure to Submit Reporting Form "R" for METHANOL to the EPA Reporting Center and to the Wyoming SERC required under section 313 of EPCRA)**

[Paragraphs 1 - 16 of the PRELIMINARY STATEMENT, GENERAL ALLEGATIONS, and the First Alleged Violation above are incorporated by this reference and set out as if fully stated herein.

17. Pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting; Community Right-to-Know Rule, 40 C.F.R. part 372. Section 313(b) of EPCRA, 40 C.F.R. § 372.22, addresses owners or operators of facilities that have 10 or more full time employees, are in Standard Industrial Classification Codes 20 through 39, and manufactured, imported, processed, or otherwise used a toxic chemical listed under section 313(c) of EPCRA, 40 C.F.R. § 372.65, in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25. Under section 313(b) of EPCRA, owners or operators are required to annually submit a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (1-90) (hereinafter "Form R"), for each toxic chemical listed under section 313(c) of EPCRA, 40 C.F.R. § 372.65, that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds.
18. Respondent's facility has 10 or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.
19. Respondent's facility is in Standard Industrial Classification Code 3999.
20. Methanol, CAS #67-56-1, is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to 40 C.F.R. § 372.22, if it is manufactured, imported, processed or otherwise used in quantities exceeding the appropriate threshold as set forth in 40 C.F.R. § 372.25.

21. Pursuant to 40 C.F.R. § 372.25, the appropriate reporting threshold for methanol which was "otherwise used" is 10,000 pounds.
22. In calendar years 2000 and 2001, in excess of 10,000 pounds of methanol was "otherwise used," as that term is defined in 40 C.F.R. § 372.3, at Respondent's facility. Respondent was therefore required to submit annually to the Administrator of EPA and to the State of Wyoming a Form R for this chemical on or before July 1, 2001 and July 1, 2002, respectively.
23. Respondent allegedly failed to submit a Form R annually in 2001 and 2002 to the Administrator and/or to the State of Wyoming on or before July 1 for methanol it "otherwise used" during the calendar years 2000 and 2001.
24. EPA therefore alleges a violation the requirements of reporting under section 313 of EPCRA, 42 U.S.C. § 11023 and the assessment of penalties under section 328 of EPCRA, 42 U.S.C. § 11048.

### **III. TERMS OF SETTLEMENT**

25. Respondent has achieved compliance with the requirements that formed the basis of the counts alleged in the Complaint.



26. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and based in part on the nature of the alleged violations and other relevant factors, EPA agrees that settlement payment from Respondent in the amount of TWO THOUSAND SEVEN HUNDRED TWENTY NINE DOLLARS (\$2,729.00) is appropriate to resolve this action taking into consideration the nature of the allegations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors. Respondent agrees to expend, at the least, from all activities and obligations associated hereto (e.g. pay such amount and perform a SEP, the sum of TEN THOUSAND NINE HUNDRED FOURTEEN DOLLARS (\$10,914)).
27. Respondent agrees and acknowledges that all payments made as a part of this agreement do not qualify for any kind of favorable tax treatment.
28. Within thirty days (30) of receipt of the Combined Consent Agreement and the Final Order issued by the Regional Judicial Officer in this matter, Respondent shall make the agreed settlement payment in the amount of TWO THOUSAND SEVEN HUNDRED TWENTY NINE DOLLARS (\$2,729.00). For purposes of calculating timely payment, the term "issuance" shall mean the date the Final Order is signed by the Regional Presiding Officer. Payment shall be made by remitting a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8  
(Regional Hearing Clerk)  
Mellon Bank  
P. O. Box 360859M  
Pittsburgh, PA 15251

The payment must reference Respondent's name and facility address, the EPA Docket Number of this action, and Respondent's Taxpayer Identification Number (T.I.N.). A copy of the check must be mailed simultaneously to the addressees listed below:

Regional Hearing Clerk  
U.S. EPA, Region VIII (8RC)  
999 18th Street, Suite 300  
Denver, Co 80202-2466

(and)

Dana J. Stotsky  
Senior Enforcement Attorney  
U.S. EPA, Region VIII (8ENF-L)  
999 18th Street, Suite 300  
Denver, Co 80202-2466

**Supplemental Environmental Project ("SEP")**

29. Respondent voluntarily agrees that it shall undertake a SEP which is intended for the purpose of securing significant environmental protection and to promote emergency preparedness capacities for its SERC and LEPC. Namely, the SEP involves the purchase by Respondent of 100 "First Responder Kits," providing personal protection for emergency responders in Natrona County, Wyoming. The cost of these kits, including packaging and shipment, is approximately

\$81.90 per kit. Respondent agrees to expend approximately EIGHT THOUSAND ONE HUNDRED NINETY DOLLARS (\$8,190.00) to fulfill its obligation to perform this SEP.

30. Respondent shall expend at least EIGHT THOUSAND ONE HUNDRED NINETY DOLLARS (\$8,190.00) on the SEP. Respondent shall provide Complainant with documentation of the expenditures made in connection with the SEP as specified in Paragraph 34 below.
31. Respondent, by executing this Combined Consent Agreement, certifies that it is not under any legal obligation, other than this Agreement, to perform or develop the SEP nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with any state or local requirements.
32. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.
33. The determination as to whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
34. Respondent shall submit a SEP Completion Report to EPA within 30 days of the completion of the SEP project and no later than June 1st, 2004, unless the deadline is extended

by the mutual agreement of the parties. The SEP Completion Report shall contain, at a minimum, the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Agreement; and,
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

Respondent agrees that failure to submit the SEP Completion Report is a violation of this Agreement resulting in Respondent being liable for stipulated penalties pursuant to Paragraph 37 below.

35. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all reports submitted to EPA pursuant to this Agreement. Respondent shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Agreement, Respondent shall, by an officer of Respondent's, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

**I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.**

36. Following receipt of the SEP Completion Report

described in Paragraph 34 above, EPA will either:

- (i) Accept the SEP Completion Report;
- (ii) Reject the SEP Completion Report, notify the Respondent, in writing, of deficiencies in the SEP

Completion Report and grant Respondent an additional thirty (30) days to correct any deficiencies; or

- (iii) following the processes set out in subparagraph (ii) immediately above, if EPA must still reject the SEP Completion Report, EPA will so reject the SEP Completion Report in writing, and seek stipulated penalties in accordance with paragraph 18 below.

If EPA elects to exercise option (ii) above, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's notification of objection to reach agreement. If agreement between the Parties cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of EPA's decision to Respondent.

Respondent agrees to comply with any requirements imposed by EPA as a result of such deficiency or failure to comply with the terms of this Agreement. In the event the SEP is not completed as described herein, as determined by EPA and within the time period established with EPA's written statement, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 37 below.

- 37. In the event that Respondent fails to materially comply with any of the terms or provisions of this Agreement relating to the performance of the SEP or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of

the SEP described in paragraph 11 above, Respondent shall be liable for stipulated penalties as provided below.

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraph 18, Respondent shall pay a stipulated penalty to the United States in the amount of Nine Thousand Dollars (\$9,000) less amounts expended in good faith to complete the SEP.
- (ii) If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalties.
- (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of One Thousand Dollars (\$1,000).
- (iv) If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalties.
- (v) For failure to submit a SEP Completion Report as required by paragraph 17 above, Respondent shall pay a stipulated penalty in the amount of Fifty dollars (\$50.00) for each day after the due date that the report is submitted.

Stipulated penalties for subparagraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 8 above. Interest and late charges shall be paid as stated in paragraph 21 below. Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting EPA's ability to seek any other remedies or sanctions available to EPA by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.

38. Any written public statement made by Respondent regarding the SEP required by this Agreement shall include the following language:

**This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Emergency Response and Community Right to Know Act.**

39. (a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify Complainant in writing within ten (10) days of the delay or date on which Respondent obtains knowledge of the anticipated delay, whichever is earlier. The notice shall describe



in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of Respondent's obligation under this Agreement based on such incident.

- (b) If the Parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.
- (c) In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of EPA's decision and any delays in the completion of the SEP shall not be excused.
- (d) The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily

justify or excuse delay in achievement of subsequent steps.

40. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e). Respondent specifically agrees that should it be delinquent with any payment, interest due on the delinquent amount shall be calculated from the date of the first payment date. Such interest calculation is non-discretionary and required by federal government debt collection procedures.
41. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.
42. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the

agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

43. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
44. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.
45. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
46. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the alleged violations set forth in this Consent Agreement.
47. This Consent Agreement resolves Respondent's liability for Federal civil penalties under section 325 of EPCRA, 42 U.S.C. § 11045, for the alleged violations and facts contained in this Combined Consent Agreement. This Combined Consent Agreement shall not in any case affect EPA's right

to pursue appropriate injunctive or other equitable relief  
or criminal sanctions for any violations of law.

48. Each party shall bear its own costs and attorneys fees in  
connection with all issues associated with this Agreement.

IN THE MATTER OF: Defense Technology Corp. of America,  
Docket No. **EPCRA-08-2003-0016**

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,

OFFICE OF ENFORCEMENT, COMPLIANCE,  
AND ENVIRONMENTAL JUSTICE,

Complainant.

Date: 9/29/03\_\_\_\_\_

By: David J. Janik\_\_\_\_\_

Michael T. Risner, Director

David J. Janik, Supervisory  
Enforcement Attorney

Legal Enforcement Program

Date: 9/29/03\_\_\_\_\_

By: SIGNED\_\_\_\_\_

Martin Hestmark, Director

Technical Enforcement Program

Date: Sept. 29<sup>th</sup>, 2003 By: **SIGNED**

Dana J. Stotsky  
Senior Enforcement Attorney  
Legal Enforcement Program  
Colorado Bar # 14717  
Phone: (303)-312-6905  
FAX: (303) 312-6953

DEFENSE TECHNOLOGY CORP.  
OF AMERICA,  
Respondent.

Date: 9/25/03 By: **SIGNED**

NAME: Deborah Conley  
TITLE: General Manager, Vice President  
of Operations

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **DEFENSE TECHNOLOGY CORP. OF AMERICA, DOCKET NO.: EPCRA-08-2003-0003** was filed with the Regional Hearing Clerk on September 29, 2003.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Mary Thorne, Esq.  
1800 Carey Avenue, Ste 700  
P. O. Box 467  
Cheyenne, WY 82003-0467

September 29, 2003

**SIGNED**

\_\_\_\_\_  
Tina Artemis  
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE  
ON SEPTEMBER 29, 2003.**